

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

MOTION FOR SUMMARY JUDGMENT
AMENDED FORMAL CHARGE III

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby moves this Honorable Court for Summary Judgment as to the allegations of Amended Formal Charge III, and as grounds states the following:

UNDISPUTED FACTS

1. Amended Formal Charge III contends Judge Renke knowingly and purposefully misrepresented an endorsement by Clearwater firefighters by asserting that he was “supported by our areas bravest: John with Kevin Bowler and the Clearwater firefighters.”

2. John Renke was contacted by Kevin Bowler, a Clearwater Firefighter and the steward of the union representing the Clearwater firefighters. (Exhibit 1, affidavit of John Renke, II). Mr. Bowler told John Renke II and John Renke III that the firefighters were supporting the campaign of John Renke, III, and would pass out literature. Mr. Bowler called the Renke law office one day and told John Renke II that the Clearwater firefighters were at Clearwater City Hall for a hearing

and asked if John Renke, III would like to come down for a group picture with the Clearwater firefighters to be used in his brochure. (Judge Renke Depo., p. 31, attached as Exhibit 2; Exhibit 1).

ARGUMENT

Amended Formal Charge III pertains to a picture and text that accurately reflect Clearwater firefighters who supported Judge Renke during his judicial campaign. The JQC argues that the picture is misleading because Judge Renke did not have the endorsement of any group representing the firefighters. To the contrary, Judge Renke did not reference any endorsement but instead merely published a picture of himself surrounded by supporters, who are employed in a profession that he admires. The JQC attempts to prove actual malice by inferring a deceptive or misleading message into a true statement and an accurate picture. Such analysis falls well below the actual malice standard and therefore does not establish a violation of Canon 7A(3)(a) and Canon 7A(3)(d)(iii).

Further, even if this true statement and accurate picture are characterized as misleading and deceptive, the representations are protected political speech. In Weaver v. Bonner, 309 F.3d 1312, 1320 (11th Cir. 2002), the Eleventh Circuit struck down a Georgia judicial canon that prohibited “true statements that are misleading or deceptive or contain a material misrepresentation or omit a material fact.” The Florida JQC is attempting to use the same theory of prosecution as

embodied in the unconstitutional Georgia canon. However, the Weaver court clearly held that judicial regulation must permit significant “breathing space” to protect political expressions. As a consequence, a judicial candidate cannot be sanctioned for making accurate statements even if the statements are arguably misleading, deceptive or omit a material fact. Thus, Charge III should be dismissed.

CONCLUSION

WHEREFORE, Respondent respectfully requests this Honorable Court enter an Order granting Summary Judgment as to Amended Formal Charge III.

Respectfully submitted,

SCOTT K. TOZIAN, ESQUIRE
Florida Bar Number 253510
GWENDOLYN H. HINKLE, ESQUIRE
Florida Bar Number 83062
SMITH, TOZIAN & HINKLE, P.A.
109 North Brush Street, Suite 200
Tampa, Florida 33602
813-273-0063
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of August, 2005, the original of the foregoing Motion for Summary Judgment has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval

Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by regular U.S. Mail to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

SCOTT K. TOZIAN, ESQUIRE